

STATE OF CALIFORNIA  
Governor

GRAY DAVIS,

DEPARTMENT OF INDUSTRIAL RELATIONS  
Office of the Director  
455 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, CA 94102  
Tel: (415) 703-5050 Fax: (415) 703-5059/8

MAILING ADDRESS:  
P. O. Box 420603  
San Francisco, CA 94142-0603



April 11, 2002  
VIA FACSIMILE 202-693-2808

Emily Stover DeRocco  
Assistant Secretary for Employment and Training  
U.S. Department of Labor  
Washington D.C. 202101  
(FAX) 202 693 2808

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Dear Assistant Secretary DeRocco,

This is a further response to the third paragraph of your letter (which had been received in our office during the week of February 10-15, 2002) and the attachment to which it refers (which followed on February 22). Your third paragraph raises your concern whether both DIR (which I read to refer to my decision in the PHCC matter) and the CAC (which affirmed it) "had improperly discriminated against PHCC members (based in part on Calif. Labor Code 3075.....)" Your letter as well as earlier correspondence referenced 3075 as the "need" standard for approving new programs.

Because your letter expressed this concern that both CAC and my decision were wrong, and the PHCC sued only the California Apprenticeship Council (which is not represented by Departmental counsel) it has taken a little time to track down the arguments pending in that case with the CAC's counsel, the Attorney General. The CAC has affirmed my decision, but in doing so has not relied upon the "need" standard. I know that I did not in my decision (a copy of which is attached.) While I am happy for you to review the lengthy decision against the allegations in the letter, the short of it is that my decision found that approval of a statewide expansion for PHCC's local Sacramento apprenticeship program should have gone before the California Apprenticeship Council, rather than been done administratively, because it amounted to a new program. Whatever the concerns Department of Labor has concerning "need," this is not a case of discrimination based on that statute, because it has never been applied by me or the CAC on the PHCC issue. The dispute we have passed upon, and now before the Superior Court, is rather the correct state procedure for certain levels of program changes, as described below.

My reading of PHCC's complaint letter to the Department of Labor of August 17, 2002, at the top of page two, is that it is anticipating that it will be a victim of discrimination under section 3075, not that it already has been. PHCC's counsel believes that its expanded program would not merit approval by the CAC. The difficulty with this argument as a basis for your concern is just that PHCC has not even attempted to propose expansion. This makes it pure speculation to assume that the CAC would deny expansion, let alone to assume that the "need" standard in Labor Code 3075 would prevent approval of the program beyond Sacramento.

Prior to our meeting next week, some background might expedite our discussion by explaining why there is the procedural difference on which my decision was based, and what options remain open to PHCC, even with some form of "need" standard in place should PHCC ask for approval using the correct procedure.

California is a large state, both in population and area. When a program is approved by the California Apprenticeship Council ("CAC"), that approval is based on scope of the program as described in the standards submitted by the program sponsor. A program proposed for one of our urban counties in a specific occupation might be totally unsuited to one of our rural counties. In this case PHCC submitted a plan for training in Sacramento County - one metropolitan county in the North Central portion of the state - for plumbers. Administratively, there is one mechanism for making minor adjustments in the scope of programs, without public scrutiny, and another for making major changes and new initiatives, which are subject to public scrutiny and comment. Under the regulations in effect at the time of both my decision and the decision complained of, the Chief of the Division of Apprenticeship Standards was authorized to approve "amendments" to program standards. The CAC is (and was) the body charged with approving changes which amount to new programs. Both unilateral and joint programs are subject to the same administrative requirements.

We received a complaint that PHCC had secured approval of what amounted to a new program using the wrong process. PHCC was fully notified, and a hearing was held before a hearing officer acting on my behalf. After full notice and an opportunity to be heard on the evidence presented, I found that the expansion of the PHCC program from one county in Northern California to fifty-eight counties statewide, coupled with changes in the administrative structure of the program, amounted to the establishment of a new program. Therefore, the approval should have been brought to the CAC.

My decision was a procedural one intended to preserve the role of the CAC in approving new apprenticeship programs. I am sure you would agree that had the PHCC proposed to change its occupation from plumber to electrician, that would have been a new program. Perhaps, if the PHCC had proposed expanding into a few neighboring counties, where existing related and supplemental instruction could be utilized, the amendment process would have been proper. I found, however, that in this particular case the expansion was so significant that, in effect, a new program had been created.

PHCC's complaint to you omits the fact that I acted in my decision to protect the apprentices from outside Sacramento, who were already in the program, and that the CAC approved that. My order indicated that they were to be allowed to continue in the program and that PHCC was to provide them with proper training. I did also order that newly enrolled apprentices would be restricted to those in Sacramento County. The scope of this order was based on the difficulty of having any meaningful review of the program's request for statewide approval by the CAC if PHCC continued to enroll apprentices statewide prior to that request. I expected that, while PHCC might seek to vindicate its earlier approval, that it would also immediately submit all or parts of its existing program for approval.

As noted above, PHCC invoked your help on the speculation that it would be denied approval by the CAC, but the fact is that no request for approval as a new program has been submitted since I issued my decision. In the year and a half that has elapsed, PHCC has focused on asking the Superior Court to reverse my decision, rather than follow the proper procedures for requesting a statewide program.

*TO: Emily Stover DeRocco, Assistant Secretary for Employment and Training*

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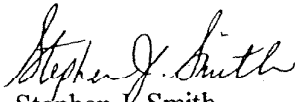
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PHCC is premature in seeking a federal remedy for discriminatory application of the "need" standard by DIR or the CAC, when it has not sought administrative relief. Their seeking approval for any new program through the proper channels is hardly futile.

I have thought all along that the test of the "need" for a program is whether the existing programs lack the capacity to train all the apprentices we need. While a public process of comment will let the existing programs make their case that they have unused capacity available, no one has demonstrated to me that we have all the capacity to train that we need for California's future skilled workforce.

I look forward to our meeting next week.

Sincerely,

  
Stephen J. Smith  
Director